

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

Lamar OCI North Corporation,

Appellant/Plaintiff,

v.

City of Norton Shores,

Appellee/Defendant.

Case No. 1:05-CV-185

Hon. David W. McKeague

JOINT STATUS REPORT

BODMAN LLP

By: James J. Walsh (P27454)

J. Adam Behrendt (P58607)

201 W. Big Beaver Road, Suite 500

Troy, MI 48084

Telephone: (248) 743-6000

Attorneys for Appellant/Plaintiff

WILLIAMS, HUGHES, pllc

By: Douglas M. Hughes (P30958)

120 W. Apple Avenue

P.O. Box 599

Muskegon, MI 49443

Telephone: 231 727.2119

Attorney for Appellee/Defendant

JOINT STATUS REPORT

A Rule 16 Scheduling Conference is scheduled for the 27th day of April, 2005.

Appearing for the parties as counsel will be:

Bodman LLP
J. Adam Behrendt
Attorney for Plaintiff/Appellant
201 W Big Beaver Road, Ste. 500
Troy, MI 48084

Williams, Hughes ,pllc
Douglas M. Hughes
Attorney for Appellee/Defendant
120 W. Apple Avenue
Muskegon, MI 49443-0599

1. Jurisdiction: The basis for the Court's jurisdiction is 28 U.S.C. § 1331.
2. Jury or Non-Jury: The civil case is to be tried before a jury. The claim of appeal should be heard by a State Court.
3. Judicial Availability: The parties do not agree to have a United States Magistrate Judge conduct any proceedings in the case.
4. Geographic Transfer: The parties do not believe a transfer for geographic convenience is warranted in this case.
5. Statement of the Case: Lamar OCI North Corporation filed a claim of appeal and civil complaint arising from the November 24, 2004, decision of the City of Norton Shores Zoning Board of Appeals denying Lamar's request for an interpretation of the City's zoning ordinance or, in the alternative, the grant of a variance to restore the sign face to Lamar's billboard located at 2780 Henry Street. Under its claim of appeal, Lamar seeks the reversal of the ZBA's decision and the issuance of a work permit to allow Lamar to complete its maintenance work. Under its complaint, Lamar seeks the entry of a judgment declaring Section 14.101(B) of the City's zoning ordinance unconstitutional, enjoining the City's further interference with Lamar's maintenance project to its signs in the City, allowing the restoration of

the subject billboard's face, and awarding Lamar money damages. Lamar also seeks an award of attorney fees under 42 U.S.C. § 1988. The City has filed an answer denying Lamar's claim or its entitlement to any relief.

Lamar initially filed a claim of appeal and complaint arising from the November 24, 2004, decision of the City of Norton Shores Zoning Board of Appeals denying Lamar's request for an interpretation of the City of Norton Shores Zoning Ordinance or, in the alternative, to grant a variance to restore the facing of Lamar's outdoor advertising structure located at 2780 Henry Street, in the City of Norton Shores. The parties believe Muskegon County Circuit Court should have sole jurisdiction over Lamar's claim of appeal pursuant to MCL § 125.585(11). However, Lamar has advanced a 42 USC § 1983 claim seeking a declaration from this Court that Section 14.101(13) of the Norton Shores Zoning Ordinance is unconstitutional, ordering the City of Norton Shores to allow Lamar to continue its alleged refurbishment project with respect to the subject billboard and an award of damages.

Because a federal claim was advanced, the City of Norton Shores removed the entire action to this Court. It is the City's contention that Lamar's federal claim should be stayed and Lamar's Claim of Appeal should be remanded to the Muskegon County Circuit Court for a decision on the appeal.

6. Pendent State Claims: This case does include pendent state claims: Lamar's claim of appeal.

7. Joinder of Parties and Amendment of Pleadings: The parties expect to file all motions for joinder of parties to this action and all motions to amend the pleadings by May 9, 2005.

8. Disclosures and Exchanges: The parties believe that Lamar's claim of appeal should be remanded back to the state court and that Lamar's civil complaint be administratively stayed pending the outcome of Lamar's appeal. Should the Court not agree, the parties have agreed to the following scheduling order for Lamar's civil complaint:

- (i) Initial Disclosures by June 1, 2005.
- (ii) Lamar expects to be able to furnish the names of its expert witnesses, if any, to the City by June 9, 2005. The City expects to be able to furnish the names of its expert witnesses, if any, to Lamar by July 8, 2005

Should the parties designate experts, all affirmative expert reports shall be due by September 1, 2005 and rebuttal reports by October 1, 2005

- (iii) The parties have agreed to make available the following documents without the need of a formal request for production:

From Lamar to the City: no stipulation as the City is currently unaware of what document it will seek from Lamar.

From the City to Lamar: the hearing record before the ZBA by May 6, 2005

9. Discovery: The parties believe that all discovery proceedings can be completed by October 31, 2005. The parties recommend the following discovery plan: Initial disclosures, written discovery (including requests for admissions, interrogatories and requests for production of documents) and depositions. Lamar will focus a significant portion of its discovery in narrowing the 28 affirmative defenses that the City has pled in response to Lamar's complaint.

10. Motions: The parties anticipate that all dispositive motions will be filed by December 15, 2005. The parties acknowledge that it is the policy of this Court to prohibit the consideration of non-dispositive discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion.

11. Alternative Dispute Resolution: The parties recommend that this case be submitted to the following method(s) of alternative dispute resolution: facilitative mediation.

12. Length of Trial: Counsel estimate the trial will last approximately 2-4 days, total, allocated as follows: 1-2 days for Lamar's case; 1-2 days for the City's case; and, 0 days for other parties.

13. Prospects of Settlement: The status of settlement negotiations is: There have been no settlement discussions.

14. Electronic Document Filing System: Counsel are reminded that Local Civil Rule 57(a) now requires that attorneys file and serve all documents electronically, by means of the Court's CM/ECF system, unless the attorney has been specifically exempted by the Court for cause or a particular document is not eligible for electronic filing under the rule. The Court expects all counsel to abide by the requirements of this rule. *Pro se* parties (litigants representing themselves without the assistance of a lawyer) must submit their documents to the Clerk on paper, in a form complying with the requirements of the local rules. Counsel opposing a *pro se* party must file documents electronically but serve *pro se* parties with paper documents in the traditional manner.

15 Other: Should the Court not agree to remand Lamar's claim of appeal, the parties request that the Court enter a scheduling order allowing Lamar to file a brief in support of its claim of appeal by May 31, 2005, the City to file a response by June 30, 2005, and for Lamar to file a reply by July 15, 2005, in the manner required by MCR 7.101.

BODMAN LLP

By 

James J. Walsh (P27454)
J. Adam Behrendt (P58607)
Attorney for Plaintiff/Appellant
201 W. Big Beaver Road, Suite 500
Troy, MI 48084

Dated: April 21, 2005

WILLIAMS, HUGHES, PLLC

By 

Douglas M. Hughes (P-30958) *with permission on 4/21/05*
Attorney for Defendant/Appellee
120 W. Apple Avenue
Muskegon, MI 49443

Dated: April 21, 2005

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2005, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the following: Douglas M. Hughes

s/J. Adam Behrendt